



STATE OF MINNESOTA DEPARTMENT OF VETERANS AFFAIRS



20 West 12th Street • St. Paul, Minnesota 55155 • (651) 296-2562
Fax (651) 296-3954 • MinnesotaVeteran.org • 1-888-LinkVet

March 1, 2022

The Honorable Jessica Palmer-Denig
Administrative Law Judge
Office of Administrative Hearings 600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Amendments to Rules Governing Minnesota Department of Veterans Affairs, Minnesota Veterans Homes, Minnesota Rules, Chapter 9050; Revisor's ID Number R-4384, OAH Docket No. 71-9054-37629.

Dear Judge Palmer-Denig:

Enclosed, please find the Minnesota Department of Veterans Affairs (MDVA) Post-Hearing Rebuttal Response to Public Comments for the proposed rule amendments referenced above. This letter supplements the information in the Statement of Need and Reasonableness (Hearing Exhibit D), and the MDVA's Preliminary Response to Public Comments filed with the Office of Administrative Hearings (OAH) on February 22, 2022.

This letter contains the MDVA's Rebuttal Response to Public Comments received during the post-hearing comment period (January 31, 2022, through February 22, 2022). As provided for in Minn. R. 1400.2230, a rebuttal period allows the MDVA to review submissions made during the post-hearing comment period and respond to new information submitted. Four comment letters were received from the public by the OAH during the post-hearing comment period. The comment letters were submitted by Julian J. Zweber, Maisie Blaine, Amber M. Hildebrandt, and Mark Wermerskirchen.

The MDVA thoroughly reviewed all comments submitted during the post-hearing comment period. The post-hearing comments mainly reiterated the comments submitted during the pre-hearing comment period (October 18, 2021, through November 23, 2021), and through testimony at the hearing on January 31, 2022.

The MDVA previously provided a response in its Preliminary Response to Comments to two of the four commenters, Zweber and Blaine, who submitted comments to OAH during the post-hearing comment period. For reference, the comments submitted by Zweber and Blaine are summarized below with the location of the MDVA's response in its Preliminary Response to

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Public Comments document. The MDVA's response to the remaining two post-hearing commenters, Hildebrandt and Wermerskirchen, whose comments were not addressed in the Preliminary Response to Public Comments is also provided below.

Comments received during the post-hearing public comment period and the MDVA's responses.

Previously responded to by MDVA in its Preliminary Response to Public Comments:

Part 9050.0600, subpart 1, item A and part 9050.0650, subpart 1. Commenter: Zweber.

Comments: The commenter expressed concerns over the MDVA's treatment of joint tenancies and tenancies in common and when the transfer of property is considered effective.

MDVA Response: The MDVA provided a response in its Preliminary Response to Public Comments (see pages 27-29 and page 58).

Public hearing testimony. Commenter: Blaine.

Comments: The commenter submitted a written copy of the testimony given at the hearing on January 31, 2022.

MDVA Response: This is a written copy of the comments made during the public hearing on January 31, 2022. MDVA's responses are provided throughout its Preliminary Response to Public Comments (see page 58).

Post hearing comments previously not responded to by MDVA:

Lack of communication about proposed changes; lack of stakeholder participation.
Commenter: Hildebrandt.

Comments: The commenter submitted a signed and notarized affidavit contending that the MDVA's claim in the Statement of Need and Reasonableness (SONAR) that interested parties and stakeholders were consulted during the amendment process is a "material misrepresentation". The commenter states that at a meeting of the Governing Council of the Elder Law Section held on February 18, 2022, all 21 council members in attendance confirmed that no representatives for the Section received communications about or drafts of the proposed amendments to chapter 9050 in advance of publication on October 18, 2021. The Elder Law Governing Council is requesting that MDVA withdraw the proposed amendments and restart the process with greater stakeholder participation.

MDVA Response: This is a reiteration of comments submitted during the public comment period prior to the hearing and at the hearing. The MDVA provided its response, as follows, in its Preliminary Response to Public Comments:.

The Administrative Procedures Act (Minn. Stat. ch. 14) and the Office of Administrative Hearing rules (Minn. R. ch. 1400) govern how state agencies must adopt administrative

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rules. This includes providing required notifications to the general public and affected stakeholders, various state agencies and departments, the legislature, and Office of the Governor. The MDVA has followed all of the required procedures for providing notice and opportunity to comment on the proposed amendments to the rules governing the Minnesota Veterans Homes.

In its efforts to inform the public of the proposed rules and to provide their comments, the MDVA created a webpage and posted the rule notices and supporting documents in a timely manner for the public to review. In addition to the statutory required notifications to the general public and affected stakeholders, various state agencies and departments, the legislature, and Office of the Governor, the MDVA also provided notice of the proposed amendments to the Minnesota Elder bar, Minnesota Veterans Council, DHS' Office of Ombudsman for Long Term Care, the Minnesota Commanders Task Force, Minnesota Assistance Council for Veterans, and the Minnesota County Veterans Service Officers. Additionally, the MDVA's subsequent filings with the Office of Administrative Hearings and notices post-public comment period were conducted in accordance with the Administrative Procedures Act and Minn. R. ch. 1400.

Part 9050. .0650, subpart 1. Commenter: Wermerskirchen

Comments: The commenter expressed concerns over the MDVA's consideration of when the transfer of property is considered effective.

MDVA Response: The MDVA provided a response in its Preliminary Response to Public Comments (see pages 28-29 and page 58).

The intent of this part is to impose a reporting requirement on applicants and residents with respect to transfers of property. The part is necessary to "track" disposition of property to eliminate transfers which are done solely to avoid payment for care. An effective transfer period is a reasonable condition of admission or continued residence as it requires minimal action on the part of the affected person and has the potential to prevent significant abuse of tax funds by discouraging transfers without appropriate consideration. For the purpose of evaluating real property of an applicant or resident that was transferred, it is reasonable to confirm the time frame of the transfer by identifying an effective date and value. The value of the property transferred or sold must be correctly documented and confirmed as an available resource. It is reasonable to identify a common requirement in a real estate transaction to provide staff a consistent and pinpoint action to evaluate the real property in question to accurately calculate value. The language does not change or alter the effectiveness of the transfer in real estate law, as the language only applies for the purpose of evaluating real property in the specific area of available property.

If you have questions regarding the enclosed Rebuttal Response, the content of the proposed rule amendments, or questions regarding the rulemaking procedures followed for this rulemaking, please contact me at 612-548-5706 or dale.klitzke@state.mn.us

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Sincerely,

Dale B. Klitzke

Dale Klitzke, Esq.

Deputy General Counsel

Minnesota Department of Veterans Affairs

Attachments.

1. **Rebuttal Attachment 1 – Minnesota Department of Veterans Affairs Post Hearing Comment Report**
2. **Rebuttal Attachment 2 – Public Comment Received by Mail, Affidavit of Amber M. Hildebrandt**
3. **Rebuttal Attachment 3 – eComments Attachment**
4. **Rebuttal Attachment 4 – eFax Public Comment, Mark Wermerskirchen**

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